



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 31, 1998

Mr. Eric M. Bost  
Commissioner  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR98-1813

Dear Commissioner Bost:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116984

The Texas Department of Human Services (the "department") received a request from an individual for the investigation records concerning the individual's complaint of sexual harassment. You submitted the records at issue to this office for review. You assert that the names and statements of witnesses and names and information about department applicants and recipients are protected from disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code protects from disclosure information that implicates an individual's common-law privacy interests. The test to determine whether information is private and excepted from disclosure under common-law privacy is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* The *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* at 525.

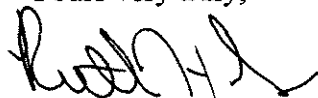
The court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity. However, the court held that the public possesses a legitimate interest in full disclosure of the facts

surrounding employee discipline in this type of situation. *Id.* We believe that there is a legitimate public interest in the identity of public employees accused of sexual harassment in the workplace and the details of the complaint, regardless of the outcome of the investigation. See Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 423 (1984) at 2 (scope of public employee privacy is generally narrow).

We have reviewed the records at issue and conclude that you must release Exhibits "A" and "B" and the victim's statement in Exhibit F, in their entirety, to the requestor and withhold the remaining documents. The documents we have told you to release do not contain identifying information about witnesses or department applicants or recipients. Exhibit A is a detailed summary of the complaint, the investigation, the recommendation and outcome. Exhibit B is a rebuttal statement by the person accused of harassment. *Ellen* provides that disclosure of the summary and the statement of the person accused of the harassment is sufficient to serve the public interest while still protecting the privacy interests of the witnesses.<sup>1</sup> Because the requestor is the alleged victim, these documents must be provided without redacting identifying information about the victim. Further, you must provide the victim's statement to this requestor. Section 552.023(a) of the Government Code provides that a person "has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). We note, however, that the identifying information about the victim may not be disclosed to the general public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 116984

Enclosures: Submitted documents

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<sup>1</sup>In this particular situation, withholding the remaining documents also keeps from disclosure the names of program recipients and applicants. Thus, we need not address your arguments concerning protection of the identification of program recipients and applicants.